

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT NJOS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 3:14-CV-1960

(Judge Kosik)

MEMORANDUM

Before the court are Plaintiff's Objections (Doc. 60) to the Report and Recommendation of Magistrate Judge Martin C. Carlson filed on September 3, 2015 (Doc. 57). For the reasons which follow, we will adopt the Report and Recommendation of the Magistrate Judge.

BACKGROUND

Plaintiff, Scott Njos, an inmate confined at the United States Penitentiary at Lewisburg, Pennsylvania, commenced the instant action on October 9, 2014. An Amended Complaint was filed on April 13, 2015 (Doc. 27). Plaintiff brings this action pursuant to the Federal Tort Claims Act, 28 U.S.C. §1346 and §§2671-2680, and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). The action is based on the alleged inadequacies in Plaintiff's psychological treatment. Following an extensive procedural history, which involves Motions for Summary Judgment filed by both parties, the matter has been assigned to Magistrate Judge Martin C. Carlson for Report and Recommendation. On September 3, 2015, the Magistrate Judge filed a Report and Recommendation (Doc. 57), wherein he recommended that Plaintiff's Motions for Summary Judgment (Docs.

34, 43 and 46) be denied, and that the Defendant's Motion to Strike (Doc. 48) be dismissed as moot. On September 18, 2015, Plaintiff filed Objections (Doc. 60) to the Report and Recommendation, along with supporting Exhibits (Doc. 61). On September 24, 2015, the Defendants filed a Response to the Objections (Doc. 68). Plaintiff filed a Reply to the Response on October 5, 2015 (Doc. 75).

DISCUSSION

When objections are filed to a Report and Recommendation of a Magistrate Judge, we must make a de novo determination of those portions of the Report to which objections are made. 28 U.S.C. §636(b)(1)(C); see Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so, we may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. §636(b)(1); Local Rule 72.3. Although our review is de novo, we are permitted by statute to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. United States v. Raddatz, 447 U.S. 667, 676 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

As the Magistrate Judge points out, Summary Judgment should only be granted when there are no genuine issues of material fact. In order for Plaintiff to prevail on his Summary Judgment Motions, he would have to show that there is no factual dispute regarding the nature and quality of the mental health care provided to him by the Bureau of Prisons.

In his first Omnibus Motion for Summary Judgment and Inference of the Facts (Doc. 34), Plaintiff requests the court to find issues of fact regarding his cell side care. In his second Motion for Summary Judgment and Inference of the Facts (Doc. 43), Plaintiff references his first Motion for Summary Judgment. In his third Omnibus Motion for Summary Judgment and Inference of the Facts (Doc. 46), Plaintiff

requests the court to enter judgment on genuine material facts regarding his cell side therapy. Along with his Motions, Plaintiff attaches exhibits of psychological assessments, as well as other documents relating to psychological issues and diagnoses.

Defendant filed a Motion to Dismiss and for Summary Judgment (Doc. 13), and supporting documentation (Docs. 23 and 24), which Plaintiff has opposed (Docs. 31 and 32)¹.

Based on the record before us, we agree with the Magistrate Judge that none of the claims raised by Plaintiff are amenable to resolution in Plaintiff's favor, as to the issues raised in Plaintiff's Omnibus Motions. Accordingly, we will adopt the Report and Recommendation of the Magistrate Judge and deny Plaintiff's Omnibus Motions for Summary Judgment and Inference of the Facts. An appropriate Order follows.

¹Defendant's Motion to Dismiss and for Summary Judgment (Doc. 13) has been addressed in a separate document.